

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COUNTY OF NEWPORT**

APPROVED 9/27/10

At a meeting of the Town Council of the Town of Tiverton, County and State aforesaid, held at the Tiverton High School Auditorium, 100 North Brayton Road, on the 10th day of August 2010 A.D. at 7:00 p.m.

President Bollin opened the meeting with the Pledge of Allegiance to the Flag.

Roll Call:	Donald Bollin-President	Jay Lambert
	JoAnne Arruda-Vice President	Cecil E. Leonard
	Hannibal Costa	Edward Roderick
	Louise Durfee	

Town Administrator, James C. Goncalo and Town Solicitor, Andrew M. Teitz were also present.

Approval of Consent Agenda:

All items listed with (CA) are to be considered routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a member of the Council or a member of the public so requests, in which event the item will be removed from Consent Agenda (CA) consideration and considered in its normal sequence on the agenda.

Council President Bollin read the items on the Consent Agenda.

Councilor Roderick requested removal of item A-4, Treasurer Draft Budget report to the next regular Council meeting. Councilor Leonard requested removal of item A-7, Town Administrator request to Advertise to Fill Position of Administrative Assistant to the Town Administrator for further discussion.

Councilor Leonard made a motion, seconded by Councilor Roderick to approve the remaining items on the Consent Agenda. Motion passed unanimously.

The Consent Agenda was as follows:

CONSENT AGENDA:

A-1-Approval of Minutes of Previous Meetings:

Approval of Minutes from Regular Council Meeting June 14,2010. No Executive Session held on June 14,2010

A-2-Receipt of Minutes from Various Board and Commissions:

- | | |
|-------------------------------------|-----------------------------------------------|
| a. Arts Council | d. Zoning Board of Review (3) |
| b. Recycling/Landfill Committee (2) | e. Municipal Buildings Advisory Committee (2) |
| c. School Committee (3) | f. Planning Board (2) |

A-3-Correspondence:

- a. Resolutions Received
1. From Narragansett Town Council Requesting Suspension of Current Catch Share/Sector Management in the Northeast Implemented by the National Oceanic and Atmospheric Administration
 2. From Town of Jamestown Regarding LNG Threat

A-5-Acceptance With Regret Resignation of Bonnie A. Kane from Conservation Commission

A-6-Approval of Tax Assessor Abatements

BUSINESS BROUGHT BEFORE THE COUNCIL:

Town Administrator – Request Permission to Advertise to Fill Position of Administrative Assistant to the Town Administrator

Councilor Leonard questioned the wording in the proposed advertising regarding qualifications, suggested including comparable experience, as some qualified candidates might not have a degree but significant experience. Administrator Goncalo agreed could also include a number of years of experience.

Councilor Leonard made a motion, seconded by Councilor Lambert to authorize the Administrator to advertise to fill the position of Administrative Assistant including language changed to include comparable experience in field. Motion passed unanimously.

BIDS & REQUESTS FOR PROPOSALS:

S Berlucchi, DPW Director - Requests Award of Bid for Purchase of a New ¾ Ton Pickup Truck, With Plow to Colonial Ford of Plymouth, MA With Three Year Financing Through All American Investment Group, LLC Secured by Town Treasurer at \$9,689.90 Per Year.

DPW Director, Steve Berlucchi, was requesting an award of Bid for the purchase of a New ¾ Ton Pickup Truck with Plow to Colonial Ford, the low bidder.

Councilor Durfee made a motion, seconded by Councilor Roderick to award the bid for the purchase of a New ¾ Pickup Truck to Colonial Ford for a total amount of \$29,069.69. Motion passed unanimously.

ADDED TO AGENDA- DISCUSSION ON CLEAN UP OF BAY STREET AREA & SITUATION WITH CONTRACTOR

Solicitor Teitz requested the addition of this item to briefly update the Council.

Councilor Durfee made a motion, seconded by Councilor Roderick to add this item to the agenda. Motion passed unanimously. Solicitor Teitz thanked the Council for their indulgence.

The company tasked with the clean up of the Bay Street area had requested advance payment, when certain milestones are met payment is made. There was a meeting at DEM with several residents and the Solicitor. No conclusive answer other than DEM is requiring more information. Envirollogic, the company tasked with the clean up has filed Chapter 7, bankruptcy. Don't know what will happen, there are various bonds, in the hands of the plaintiffs group. It was indicated there was still some money in the initial funds. .

President Bollin, with regards to an Ethics Advisory Opinion again recused himself and left the Council table.

PUBLIC HEARINGS- ADVERTISED:

Tiverton Yacht Club – Request Zoning Ordinance Text and Map Amendment

Recommendation of Planning Board

Response from Wastewater Management

Letters and Comments from Residents and Tiverton Yacht Club

Response Memorandum from Tiverton Yacht Club

Response Memorandum from David Campbell, Visconti & Boren Ltd.

Minutes by Stenographer – Ledgewood Court Reporting for Public Hearing June 14, 2010

Minutes by Stenographer – Ledgewood Court Reporting for Public Hearing July 19, 2010

This Public Hearing was resumed, continued from July 19,2010. Solicitor Teitz noted normally the chair of the meeting would fall to the Vice-President, however Vice-President Arruda was absent at the last meeting. Vice-President Arruda did watch the video of that meeting to familiarize herself with those proceedings could adequately participate but will not preside because of continuity.

Councilor Durfee motioned Councilor Roderick continue to chair the Public Hearing. Seconded by Councilor Leonard motion passed unanimously.

Councilor Roderick asked for and reminded the audience about being respectful and remaining civil. Asked if there are any handouts they be given to the Town Clerk. Solicitor Teitz reminded the audience the Public Hearing was still technically open for the Council to ask questions and for closing arguments from the attorneys, not for open testimony which was concluded. Councilor Roderick asked for questions from the Council at this time.

The following are the transcribed minutes from the Public Hearing.

TOWN OF TIVERTON
TIVERTON TOWN COUNCIL
MINUTES AUGUST 10, 2010

Town Council Members present:

Donald Bollin, President (recused from this petition)	Louise Durfee
Joanne Arruda, Vice President	Hannibal Costa
Jay Lambert	Cecil Leonard
Edward Roderick (presiding chairman for meeting)	

Also Present: Andrew Teitz, Esquire, Jeanne Scott, Esquire, Counsel for Tiverton Town Council
Nancy Mello – Clerk/Secretary
James Goncalo – Town Administrator

The hearing began at 7:13 p.m. Chairman Donald Bollin recused himself from this petition and turned the meeting over to Ms. Arruda, vice president. Ms. Arruda entertained a motion to have Mr. Roderick preside over the petition for continuity issues. A motion was made by Ms. Durfee and seconded by Mr. Leonard to have Mr. Roderick preside over the meeting. The vote was unanimous.

The meeting began by Mr. Lambert asking Mr. Tremblay and Mr. Campbell questions. Mr. Lambert asked Mr. Campbell is it possible to say that depending on the outcome of the appeal to the Supreme Court every single nonconforming use issue that's being raised here in connection to the proposing zoning amendment could actually be moot at some point when the Supreme Court gives its decision and Mr. Campbell responded it's entirely possible, however, he cannot predict what the appellate court will do with any of the issues. Mr. Tremblay had an opportunity to address this question also.

Ms. Durfee stated to Mr. Tremblay one of the issues that has concerned her is the elimination of all set back requirements as proposed in his amendment. This has broad policy implications for people who are protective of all the water sources in the town. Ms. Durfee asked Mr. Tremblay wouldn't it be acceptable to keep those provisions in and add language to protect water sources particularly type three waters in the Town of Tiverton. Mr. Tremblay responded he was agreeable to that suggestion.

Ms. Durfee stated in Mr. Karzenski's initial testimony before the town council he stated the Tiverton Yacht Club was considering two choices, one is water front related district and the extension of the water front district which is the curley que. Ms. Durfee asked Mr. Tremblay why he did not choose the curley que and Mr. Tremblay stated the best answer would be from Mr. Karzenski. Mr. Karzenski addressed the town council and stated we were looking at what would be the best way to go about this to make this a conforming use and the first and most obvious thing to do is move the water front district over which should have been done initially in 1964 when zoning came in. Mr. Karzenski further explained through discussions with the town planner, he was talking about a transition zone so the Yacht Club followed the lead of the town.

Mr. Leonard addressed his concerned to Mr. Tremblay about Article 10, Section One, off-street parking regulations. And one of the things that concerned him is that there is a very large marina just up the street who has met certain parking requirements. Mr. Leonard asked Mr. Tremblay why should they change parking

requirements for the Yacht Club since the large marina has apparently complied. Mr. Tremblay answered under the Tiverton zoning ordinance as it states right now there is no parking requirement for the yacht club marina. The only structure on the site is the storage lockers and parking is determined by those storage lockers. Mr. Tremblay went on to say it's something that should be addressed.

Both Mr. Tremblay and Mr. Campbell went into discussion concerning spot zoning in response to a question by Mr. Lambert.

In his closing argument, Mr. Campbell stated that this is not consistent with the Comprehensive Community Plan. It is residential zoning that does not belong in the Tiverton water front. Mr. Campbell also stated this is invalid spot zoning that benefits one property and one property only. Mr. Campbell went on to say the only expert testimony received was from Mr. Lombardo, a certified planner, who said it's plainly inconsistent. There will be devaluation in property values. Mr. Campbell posed the question how can we exempt one commercial use from the parking requirements? Mr. Campbell said this marina should comply with the parking requirements just like every marina in town needs to. Mr. Campbell concluded this is for one benefit of one user at the expense of the town, the neighbors, the neighborhoods in the town for one seasonal three month use.

Mr. Tremblay in his closing argument stated in 1964 there was no zoning. The town made the Tiverton Yacht Club a nonconforming use by making the Yacht Club residential. Mr. Tremblay went on to say that was a mistake. Mr. Tremblay also said if the Comprehensive Community Plan supports the change proposed by the yacht club, then the change should be made to correct that error. Mr. Tremblay concluded by saying the Tiverton Yacht Club wants to rebuild and the only way they can do that is by correcting the mistake that was made in 1964.

Ms. Durfee suggested that the decision should be drafted by the town solicitor just in case this matter is litigated. Mr. Teitz agreed to that suggestion. Mr. Roderick closed the public hearing at this time and a ten-minute recess was taken.

After the brief recess, Mr. Roderick proposed this matter be put on the agenda for the September 13th meeting for a final vote. The council directed the town solicitor to clarify certain points. Mr. Teitz stated he would prepare a decision, which the council will have in advance of the September 13th meeting.

Mr. Leonard made a motion to put this matter on for discussion to the September 13th meeting and for a final vote. Mr. Costa seconded. The Vote was unanimous. Mr. Leonard stated he preferred the September meeting be held at the town hall. The council members agreed.

Whereupon the meeting concluded at 9:19 p.m.

TTC/ssf

Acting President Roderick closed the Public Hearing at this time.

TOWN ADMINISTRATOR ANNOUNCEMENTS, COMMENTS AND QUESTIONS:

- 1 There will be a mixed rigid plastics drop off at the Public Works garage on Saturday, 8/21/10 from 8-12. The last one netted one ton.
2. Tax Sale on 11/5/10 at 1:00 pm at the Town Hall, 2008 delinquent taxes \$370,000,150 notices issued, 16 properties removed from the list totaling \$31,400.
3. Harbor Master David Vannier recovered a boat that was aground, brought safely back to a mooring, was commended.
4. Recycling in the last six months of 2009 was 840 tons. The first six months of 2010 was 968 tons for a 15.2% increase. Should get another rebate, how much is unknown.
5. There will be a Road Safety audit on Sept. 13 and 14 at Bliss Corners conducted by the Federal Highway Safety, Tiverton Police Dept., Statewide Planning, RI DOT and Commonwealth Engineering for vehicles, pedestrians and bicycles. Planning Board Administrative Office, Kate Michaud, is coordinating the event.
6. There will be a motorcycle ride for Diabetes August 15th on Main Road, estimated 150 bikes. .

COUNCIL ANNOUNCEMENTS, COMMENTS AND QUESTIONS:

Councilor Leonard, noting the upcoming Primary Election on September 14, 2010 inquired about polling locations. Town Clerk Nancy Mello noted several changes to be advertised in the coming weeks. Voters being notified by postcard. The polling locations are:

1. District 3301-Ft. Barton School (previously Town Hall).
2. Districts 3302, 3304 and 3305 combined will be voting at Pocasset School.
3. District 3303 will be at Countryview Estates, Community Room
4. District 3306 will be at the High School Gymnasium.
5. Districts 3307 and 3308 combined will be at Amicable Church.

TOWN SOLICITOR, ANNOUNCEMENTS, COMMENTS AND QUESTIONS:

CLOSED EXECUTIVE SESSION:

There was no Executive Session held at this meeting.

ADJOURNMENT:

Councilor Roderick made a motion to adjourn, seconded by Councilor Durfee. Motion passed unanimously.

Council adjourned at approximately 9:20 p.m.

A True Copy.

ATTEST: _____
Nancy L. Mello, Town Clerk